

SPECIAL COMMITTEE ON ALCOHOL, OTHER DRUGS, AND YOUTH SERVICES

January 04, 2021

Immediately Following CIP

Chairman Barry called the meeting to order.

Chairman Barry stated due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Committee is authorized to meet electronically.

The Clerk called the roll.

Present: Aldermen Barry, Cavanaugh, Long, Roy, O'Neil

Messrs.: E. Rice, Mayor Craig, A. Aldenberg, K. Sheppard

4. Report from the Committee on Administration/Information Systems recommending that ordinance amendments:

“Amending Chapter 130: General Offenses of the Code of Ordinances of the City of Manchester by adding a new section prohibiting camping in public places.”

“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

be referred back to the Special Committee on Alcohol, Other Drugs and Youth Services.

(Note: This committee report was accepted at the 10/29/2019 BMA meeting.)

Chairman Barry asked for a motion to table the ordinance amending Section 96: Parks and Recreation for further review by DPW.

Alderman Long stated my understanding is that Section 96 has already been taken care of. I don't know if Emily or Greg Muller are on the call.

Emily Rice, Solicitor, stated the sum and substance of the discussion back when it was considered by the Committee on Administration and the Board was that in its current form it is what I will call inexpedient to legislate because of the administrative structure attached to it. This committee is certainly free to consider it if that is what you wish to do but I think it was generally considered to be unyielding and it would be a major headache for DPW and wouldn't produce much of a benefit. That is my attempt at summarizing the discussion.

Alderman Roy stated I am glad I just heard that it was going to be a difficult thing for DPW because you all saw the letter from them stating that it is outside of their scope of services and I agree. Here is my question. If we pass this ordinance, who is going to enforce it? I have a concern about ordinances that don't get enforced.

Chairman Barry stated that is why I think we need to focus on amending Chapter 130 and we can discuss that tonight. Matt, could we receive and file the second amendment?

Matthew Normand, City Clerk, replied yes but it is important to understand that there are two different sections being amended so if the committee wanted to receive and file the section pertaining to Section 96 they could certainly do that and it sounds like the section regarding Chapter 130 could go forward if the committee so decides.

Mayor Craig stated just to clarify a conversation that I had with Alderman Long today, currently individuals are not allowed to camp in parks and in cemeteries. I just want to make sure that is clear. So the information for Section 96 is in addition to what is off limits today and it is up to this committee whether you want

to receive and file it. I would suggest that you ask the departments to work together to get to the Board what we are trying to achieve in a less complicated and complex way versus receiving and filing.

Chairman Barry stated the other option we have is we can have discussion right now about amending Chapter 130 and talk about the impact it is having on our city and discuss enforcing it. My understanding is that the Police Chief is on the call as well as Solicitor Rice. Why don't we go into discussion about the first amendment? Alderman Roy is correct. We absolutely need to start enforcing this. For quite a long time, we were using and I will say it and maybe it isn't correct but as a crutch the Martin vs. Boise, Idaho because we couldn't remove people from the streets, specifically Elm Street, that were sleeping on the sidewalks in sleeping bags and taking over the sidewalks. We couldn't remove them unless we had a place for them to stay. Now that we do have places for them to stay, we have more teeth in the matter but it is going to come down to Solicitor Rice and the police advising us on how to enforce it.

***Alderman Long** moved to table the ordinance amendment regarding Section 96. **Alderman Cavanaugh** duly seconded the motion. Chairman Barry called for a vote. The motion carried on a unanimous roll call vote.*

Chairman Barry asked regarding Chapter 130, Solicitor Rice could you let us know what we can do in reference to enforcing this.

Solicitor Rice answered as you know, unlike many other states municipalities in NH don't have the legal ability to adopt criminal sanctions or laws or violations. Therefore, we are limited to adopting ordinances that have a penalty, in our case, of up to \$1,000 per Section 10.99. This is an effort to add a tool to the toolbox for the Manchester Police vis a vis camping in public places. As the Mayor pointed out, camping is already prohibited in parks and this is going to essentially extend

that prohibition. However, because it is not a criminal statute, the extent of the city's remedy is to issue a ticket in effect. Obviously to the extent that there are any other crimes that are ongoing by people that are camping, the Manchester Police Department is very familiar with what they are able to do. We are not able to promulgate a criminal sanction.

Chairman Barry stated if someone was asked to move and advised that there is a shelter bed available in the city and they refuse to leave do the police have the authority to charge them with disorderly conduct or criminal trespassing.

Solicitor Rice responded it depends on the facts and circumstances at the time. Certainly if the individual engages in any criminal conduct either disorderly conduct or resisting arrest...I could give you a whole list of things then yes. All of those other tools are still in the Police Department's toolbox as they have always been. If the individual merely stays in place and doesn't do anything more than that, then you would need some additional conduct to occur in order to prosecute that person for another crime. This is not a crime. This is a violation of an ordinance. Let me just address an anticipated question. For example, because we don't have the authority to adopt criminal sanctions as a municipality, we could not for instance say to an individual that has three or four tickets under this ordinance that now that they have three or four tickets we are going to arrest them. In other words, we can't end run that prohibition against enacting criminal sanctions by simply adding up violations. We tried something similar and I will just say that the court was not happy with it. We can't just add up ordinances and say okay now you have committed a crime. That is not appropriate under the law.

Alderman Long asked the court can do something if say someone had four \$100 fines correct.

Solicitor Rice answered I want to make sure you understand the current situation given the courts and COVID-19 if I may because that is probably going to be with us for some time. In order to keep everyone safe, as you know, courts have curtailed their operations. For example, right now there really aren't any arraignments going on unless somebody is detained. There are also no trials occurring unless someone has been detained. For a violation like this, nobody is going to be arrested or detained so I think it is reasonable to expect that there won't really be any court involvement for many, many months. That is really true across the board at this point.

Alderman Long stated we had this issue with other violations where people don't pay the fine. I believe it had to do with housing issues. The statehouse just started up again so we will be in meetings with judges on issues and that is why I am asking.

Solicitor Rice stated there are consequences to not paying fines but again given the current era, I think it is reasonable to expect that sanctions for not paying fines are not going to befall people for many, many months as a practical matter. I just think you should know that.

Alderman Long replied well I don't look at practicality. I just look at the light at the end of the tunnel. With respect to camping, that doesn't necessarily mean they need a tent correct? If I am dwelling there I am camping there.

Solicitor Rice responded that is correct. It is a very broad list of things including, but not limited, that is in that prohibition section 130.13.

Chairman Barry asked so if someone is sleeping on Elm Street whether it be in a sleeping bag or under blankets or whatever and the police go there to remove them because we have a no camping ordinance, what is the next step if they refuse to

leave. Other than giving them a violation ticket to pay a fine...our goal and we worked our tail off to try to find a remedy to make sure there is enough room for people to stay during the night because that was their excuse as to why they were staying on Elm Street and camping out but the city and the Mayor and the Fire Chief and the Health Director and all of our departments have worked very hard to find a solution and find them places to stay. We have that now and we want to make sure that we keep our city streets and our parks clear so that we can move people along with the understanding that they have a warm place to stay. Other than just giving them a ticket, do we have the authority to remove them?

Solicitor Rice replied it depends on what they are doing at the time. That is in the judgment and discretion of the responding law enforcement officer as it would be in any situation. The penalty for violating this ordinance is not to be arrested and removed. That is not a sanction that we as a municipality can impose.

Mayor Craig stated just picking up on what Alderman Long said, I am wondering if the Solicitor can be proactive in reaching out to the courts to let them know what we are doing. With the cold winter months coming and knowing that some individuals who are living outside have severe mental health issues and may not be able to make the appropriate decisions for themselves to get into shelter, I think it is important that we have a means by which to make sure that people are in the beds that we have worked hard to get so they are not dying in the cold winter months that are right around the corner. I know that the courts are closed but I think there is an opportunity potentially for us to reach out and maybe work something out given the crisis that we are in right now.

Solicitor Rice responded we have regular conferences with the court and I would be more than happy to put this on the agenda. I would say that the operation of our court here in Manchester with respect to COVID-19 orders is governed by

orders from the NH Supreme Court. I will certainly put this on the agenda. I would be happy to.

Chairman Barry stated if you could do that sooner rather than later because the longer we prolong this...we are in the dead of winter right now so we certainly need to take care of this.

Alderman Roy stated let me give a hypothetical to Emily. I am a homeless person camping out someplace where the city doesn't want me to camp out and you give me a ticket. I don't assault the officer or do anything out of the normal so all they can do is give me a ticket. I obviously don't have the money to pay. While I get that this is part of the discipline that we need to clean the city up, we have to go on other avenues as well. What happens then? You give me three or four tickets. What is going to be the result for that person who obviously can't pay?

Solicitor Rice replied there isn't going to be a criminal sanction against someone for not paying tickets. I think to your point, Alderman Roy, this is a tool but it is not a panacea. It is not going to fix the situation but it is going to give the city additional encouragement and additional leverage and another point of contact with individuals who are outside that could go inside in order to encourage them to do so. I think the point on this call is very well taken that the city did work very hard to create additional beds and those additional beds are not full and this is one tool among many to encourage people to go inside and be safe but it is not a criminal sanction.

Alderman O'Neil asked do we have the right to remove people from public areas that have set up tents. I am not talking about parks but in other public spaces not defined.

Solicitor Rice asked absence this ordinance.

Alderman O'Neil answered right.

Solicitor Rice stated I hate to keep giving a lawyer answer but it depends. It depends on where they are and what they are doing.

Alderman O'Neil asked but if we pass this ordinance it gives us more leverage.

Solicitor Rice replied yes. It is an additional tool among many tools that both law enforcement and the social service agencies and the Fire Department and others have. I think it will be a helpful tool.

Alderman O'Neil stated please don't take this wrong but after the number of fatalities we had lately, I drive by River Road pretty regularly and we are going to have something really bad happen up there because I see propane tanks and I see tents adjacent to each other. We are going to have something bad and it is not going to be one person, it is going to be multiple people. I would rather use this to its fullest and if we are challenged later, we are challenged later. As Alderman Barry and the Mayor pointed out, we now have the beds. That was something we couldn't deliver on but we now have the beds. Something bad is going to happen in this community. I go by River Road regularly and it scares the heck out of me and it is not going to be just one person passing away. It is going to be multiple people because of the proximity of the tents to one another. It seems that every time I go by there something else is added. Now they have storage areas for their tents. They have set up tarps so they can store stuff next to them. I don't want to be picking up the newspaper or getting a call from the Mayor saying we had four or five people pass away on River Road. I would rather be aggressive with this, get them help and get them into shelters and if we have to fight it later we fight it later. That is my opinion. Some of these people cannot protect themselves and they are going to cause harm to not only themselves but others. Those are the

ones I see. I talked to Alderman Shaw about the ones on the railroad bed. I haven't gone and walked down there and I don't know how deep that is but River Road scares the heck out of me. We need to get aggressive and remove those camps and get those people into shelters. That is my opinion. If we are criticized by a court later, so be it. At least we saved a life. We got them through the winter and we saved a life because alternative heating sources were not used there and I would sleep better at night.

Alderman Roy stated I am sorry but I just don't believe that this is going to solve our problem.

Chairman Barry responded I agree and we are all on the same page that our goal isn't to hit these people in the pockets because that is not going to do anything. They don't have any money and that is why they are out on the street. That is not our goal. We don't want to say you are going to owe us money if you don't do the right thing. I would recommend that we pass this and get it moving and hope that the teams going out and talking to individuals let them know that we do have space available and we do have an ordinance and they can't camp or stay overnight. I guess we have to deal with it. I am not saying we are not doing anything because we are. We are working really hard on this whole thing but now that we have something in place and room for people to stay, I think it is time for us to start helping these people out and work with them on going to the shelters and using the shelters that we want them to use.

Mayor Craig stated I know that Alderman Cavanaugh has a comment but just to pick up on what you said, homelessness is such a complex issue and I wish there was just one solution that we could come forward with that would fix everything but that is not going to happen. What we have done is layered on our approach as time has gone by and now that we do have 40-50 vacant beds right now we really need to be proactive and work toward getting individuals into those beds. I can

confirm that the outreach workers are communicating this to individuals who are living outside and as a result of all of the work that this Board has done and the non-profits, there are about 200 beds right now total capacity; emergency shelter beds for the winter time. We need to do everything we can to make sure we are getting people who are living outside into those shelter beds where it is warm and safe and where there are supports available to them. After staying the first night, they are able to stay in the shelter during the day. We know, as Alderman O'Neil said, that they can't live outside in these cold winter months. It is not going to go well. I agree that we need to do everything that we possibly can to get people into the shelters.

Alderman Cavanaugh stated I think it is important that we do have...if I am camping and I refuse to abide by a police officer's order, I think I can get arrested. It is not to just arrest these people but we have to push them. We have been working so hard and not to repeat what everyone has been saying but now we have the beds and we have been confined by the pandemic to keep them separate but we have done so much work that we have to get them help. If you look at the stretch of weather coming up in the next few nights, it looks like it is in the teens. Sometimes you really have to force someone to get some help and some shelter and I think that is what we should do. I guess my question is if someone refuses an order from a police officer could we...I would hope that they would take the shelter instead of getting arrested.

Allen Aldenberg, Police Chief, stated it would have to be a reasonable amount of time. So if we encounter somebody and we confirm there is a bed available, no matter what time of day and we will have that process in place, and my officers circle back around in an hour and the person is still there then that is when we would enforce the city ordinance. The big thing we are not really discussing here is their property. That is big to these people. That property is their life. For us to just say there is a bed available and get whatever you need to get into the shelter

and all of this other stuff gets left behind, what do I do with that because it is not coming to the PD. I will be honest with you. I don't have the room for it nor should I be required to take that stuff here. A lot of them are tied to their property so we need to have a legitimate plan in place that says we are going to store your property at this location for a period of time to give them some kind of piece of mind that okay at least I know my property is going to be safe so maybe I will take the bed for a couple of nights.

Chairman Barry stated the other thing, Chief, is it is going to be their responsibility if they get asked or told that they have to leave, especially if the police have been around the block a few times and they are still there and haven't complied. Part of them leaving is that they have to bring their belongings with them wherever they go. We are hoping they are going to go to the shelter and they will have to coordinate with someone to store their belongings. That shouldn't be a city responsibility. I know in the past that Public Works has gone to the city parks and even downtown and removed belongings that have been left behind because no one is there watching over them. At that point, the city has the authority to just remove them because it is unclaimed property. I think we have to keep in mind that if they are removed, they are responsible to bring with them their belongings or unfortunately they are going to be dealt with by the city. I don't want to have the Police Department responsible. It is the person's responsibility to take it with them.

Chief Aldenberg stated I don't want to set an unreasonable expectation where say a person on Elm Street says I have somebody who will be here in two hours to get my stuff while he goes off to the shelter. It is an unreasonable expectation to say the Police Department is going to sit by his property for two hours. That is just not reasonable. We need to have a process that addresses that. If they get separated from their property, they are going to be even more resistant. I am just telling you the reality. I am not trying to be difficult.

Alderman O'Neil asked can somebody explain to me how the state did what they did. They posted a notice and said we are going to remove the camps by a certain date and they followed through. Alderman Barry you are the one that said they met the spirit of the law by getting people into a place for one night but then they removed all of their tents and belongings. I don't understand how the state can do it and we can't do it. How are we prohibited from doing that?

Solicitor Rice responded I would be happy to try and answer your question. My understanding is essentially what happened is everybody who was asked to leave the property left. I do believe that there were a couple of arrests for disorderly conduct. I don't know what the facts and circumstances of those arrests were but I believe disorderly conduct was the charge. I think there are charges pending against perhaps two or three individuals who are being prosecuted by the state police. I think what the Chief is talking about is under this particular ordinance which has no criminal sanction, is in order to encourage people to go inside and be safe it will be easier for them to leave the outside and go inside if they can be assured that their possessions are not going to be thrown away. I think that is what he was talking about as a practical matter.

Alderman O'Neil replied but nobody has answered yet how the state did what they did. They told the people you have to get out of this camp.

Solicitor Rice stated and they left.

Alderman O'Neil asked why can't we do the same thing.

Solicitor Rice answered the problem is what happens if they don't leave. What legal remedy do you have? That is the sticky wicket. Fortunately, and again I don't know how many people were there. There were a lot of people but 99% of

them left and there were two or three arrests for disorderly conduct and those charges are still pending.

Alderman O'Neil stated I am not sure those were homeless people. The Chief might be able to answer but they might have been protesters. However, nobody is answering the question about why we can't give them a date certain to get out of the camp and tell them we have housing for them at night and if they don't get out we are going in and cleaning the camps out. I don't know why we can't do that.

Solicitor Rice asked are you talking about Canal Street because we are only talking about 40 shelter beds. Let's talk about Canal Street for a minute because maybe that is the easiest example. That property has been cleaned and there is more cleaning that is planned.

Alderman O'Neil stated I have to stop you there. The place is a pig sty.

Solicitor Rice responded I think going back to your original question, you could go over there or the police could go over there and say okay everybody has to leave in 10 days and if the 10th day comes and there is no place for those people to go, what are you going to do.

Alderman O'Neil replied we have a place for them to go.

Solicitor Rice stated you may not. It may fill up in those 10 days. You don't know. I am saying that what the state did was they had a bunch of vans and they encouraged people to leave and they all left. That is what happened.

Alderman O'Neil stated I just don't understand why we can't do the same thing. I don't understand that.

Mayor Craig stated I was watching what unfolded that day and the state did not have a bed for everybody who left that site. In fact, we had to open up the Senior Center on that day because we were told we needed to house people. We also got our partners localized – Manchester Mental Health and FIT, and they got 10 people into the shelter. That wasn't the state. The state did not have beds for every single person and in watching what unfolded, everybody didn't leave on their own accord. So I just need to set the record straight. I was watching and that is what happened.

Alderman O'Neil asked so Your Honor are you saying that we should be able to do what the state did.

Mayor Craig answered I am just clearing the record on what I saw with my own eyes. I think the difference here is that we do have beds. I am not in a place where I am saying kick people out of an encampment to move them along. We have beds that we can move them to and I don't know why we cannot have them go to that bed. I know we can't make them go. They may choose not to but it doesn't seem right to me that they can choose to stay on city property when we are offering them a bed and they choose not to take it.

Chairman Barry stated maybe Atty. Rice or the Chief could reach out to the state and find out if the people who were arrested were those who refused to leave and what criminal act they cited.

Alderman Long stated I was there too when the state cleared out the place. The people who refused to leave were told that their stuff was being taken and thrown in the trash. Everybody didn't say oh you want us to leave, okay. There was actually a guy camping there who went there from work and had all his stuff picked up. I am thinking there were 40 or 50 people there. I heard numbers of 20 and 30 that got help but immediately that same day I know of at least two who

came back to Manchester that same day. To Alderman O'Neil's question, if we were to do that and we had the beds could we do that?

Solicitor Rice answered I wasn't there and I did not see what occurred. All I know is that three people were arrested. I know the city worked very hard to ensure that people had a place to go and a lot of people spent a lot of time doing that. It took a tremendous amount of time and effort not only from the city but from our non-profit partners and agencies to find places for those people to go. The state has a different interpretation of the law than I do. I don't think the criminal justice system has a complete answer here. It is part of the strategy. I think the Manchester Police Department has addressed criminal activity that is occurring in all locations across the city including these locations and I am very confident that the Chief and his department know and understand the law and will bring those sanctions to bear whenever they are appropriate. I think the spirit of this particular ordinance is to make sure that we have both sides of the coin in place from a city standpoint and to utilize this statute, along with the other tools, to have people go inside where it is safe especially now that we have room available to do so.

Whether or not a criminal sanction can be brought to bear against a particular individual in a particular circumstance, I don't think you want that to be done if a conviction cannot be attained. Right now with regard to the courthouse property, there are no convictions yet so the end of the story has not yet been written vis a vis the arrests made at that location. All I can say is that there were many people there and very few arrests. Whether or not...

Alderman Long interjected many people had all of their belongings on the sidewalk because they were told move your belongings or we are going to throw them in the trash. That was their...could we have the interpretation from the state? You said you had a different interpretation than the state. Can we get the state's interpretation?

Solicitor Rice replied sure.

Alderman Long stated with respect to Chief Aldenberg, I agree. Their possessions are all they have so we have to be reasonable. It would be easier if we found a solution to their possessions. We could assure somebody that we have a locker and we are going to put their stuff in there and we have the key and nobody is going to have access to it or something else. If we can't assure that somebody will say okay it is Monday and you want me to move all of my stuff because you have a place for me okay I will take it but my uncle is coming down on Thursday to pick up my stuff. What do you do? Do you wait until Thursday for the uncle to come down and pick their stuff up?

Chairman Barry responded no it just won't be at the place where they left it. It is going to be their responsibility to remove their items when they are removed from the city streets and brought to a shelter. Their responsibility is not only for themselves but also their belongings. It is not the city's responsibility. It is like if somebody gets evicted it is the tenant's responsibility to take what is theirs and then the landlord has the authority to remove anything else. If you leave something behind...the state is right and I agree with them that if you are going to leave something behind unfortunately we are going to dispose of it. I think they are right.

Alderman Long stated we are talking about people with substance use disorders and mental health issues.

Chairman Barry replied I get it but they should know and are going to know that we have space available for them to go to. A lot of these things that they are carting around like blankets and so forth they won't need because they are going to have shelter.

Alderman Roy stated I agree with all of you that we have to solve this problem. I think this needs work. Alderman Long is right and the Chief hit the nail on the head. Those belongs are everything that these people own in the world. We need to have a place to put that property. The idea that they are going to be responsible for it is ludicrous because they haven't got the capability. Their answer is my uncle is coming on Thursday. Well until then what is going to happen. You mentioned that the landlords have rights and yes they do but I think they have to hold that stuff for 30 days.

Chairman Barry stated it is still the person's responsibility.

Alderman Roy stated what the state did in my eyes was unconscionable because they destroyed these people's entire lives. What is that stormtrooper mentality going to create? It is going to enhance non-compliance. We have to go in there and offer these people hope. I know we haven't got all the answers and the Mayor is right that it is going to be multi-layered but this is not going to solve our problem and enforcement is not the answer. These people need help.

Chairman Barry stated I want to comment on that quickly. That is why we have these outreach people Alderman Roy. They go out and deal with these people and we have been dealing with these same people over and over again. I know that a lot of them are suffering from mental illness or substance abuse. I get it and we all know that and we are trying to help but we are trying to help by keeping them safe and when it comes down to safety we are taking the responsibility as a city to finding them beds. Some of these people for some reason or other just don't want to go there.

Mayor Craig stated I wanted to mention a couple of things. One is when an individual is on the street and police has confirmed there is a bed it is their bed and their name is on it and underneath that bed is a trunk that they can put things in. I

just want to make sure that people understand there is some storage at the shelter for individuals. However, if this committee wants to store property, then I would direct Parks & Recreation or DPW to figure out a process and do it. We have the Transfer Station and other places. If that is important, what we have to do is not put this off because we have been having this conversation. The department heads need to figure out a process and get it done. We need to get this done. If that is the intent of this committee, one remember that there is some storage for belongings at the shelter and if you want the city to store things we can do that but a process has to be put in place and we need to get it done now. I just think that time is of the essence. We have a lot of beds and cold months coming and we cannot put this off.

Chairman Barry stated I wouldn't recommend that the city take responsibility for storing items because what you are going to end up finding out is someone who says they had an antique whatever that is now missing and they will look to the city to be responsible. I know we are going off base a little.

Mayor Craig stated there are a lot of ifs and all of that.

Chairman Barry stated I think the storage under the bed is fine.

Mayor Craig stated I just have to say that there are processes in place that have been pretty much finalized in terms of what can be done. I know it is going to take departments doing things that are outside of their job description but ever department and almost every employee in the city is doing something different than what they thought they were going to be doing because of the crisis of homelessness in this city and we need to address it. We can't put this off. Again, if this committee wants to store property, we can do so for a certain finite number of days. I am sure we can find a place. There could be a sign off on a sheet and

you can take a picture and be done with it. It can happen. It is just the desire and the process needs to be put in place and we can't not do it anymore.

Chairman Barry stated it is my understanding that if John Smith goes to the shelter tonight his name is on that bed and he can stay the other night and have that same bed. Is that correct?

Mayor Craig replied yes.

Alderman O'Neil stated something bad is going to happen at the River Road camp. They are in violation of fire codes because they have propane tanks and gas grills and charcoal grills under tents and tarps. Something bad is going to happen and all of this discussion about and ordinance...we have to take a bold step here. I am not looking at propane tanks as being their possession. I am not looking at shopping carts as being their possession. I am not looking at garbage that is all over the place as their possession. They can get their possessions and get into the shelter. This delay about letting this go on, that camp every single day is getting bigger and it is getting worse. Like I said, I see gas grills and charcoal grills out there. Something bad is going to happen. We have to stop trying to throw softballs at it. We have to take a bold step on this thing. That is my opinion.

Alderman Long moved to approve the ordinance amendment to Chapter 130.

Alderman O'Neil duly seconded the motion.

Alderman Roy stated I will agree to it as long as they have someplace to store their belongings and Alderman O'Neil is correct that a shopping cart or propane tank is not what we are talking about. The Mayor is also right that there is a process we can adopt that will make sure we are not liable for stuff.

Alderman O'Neil asked is there a plan to address these camps beyond just passing this ordinance. I know that Alderman Long is working on all kinds of alternatives but the only way we are going to get some of these people to move is we have to force them. We have to force them to move.

Chairman Barry stated that is why I think it is important to bring this to the full Board tomorrow night.

Alderman Long stated I am thinking that once we see the state's interpretation of the law compared to ours from the Solicitor's Office we could maybe move forward with what Alderman O'Neil is saying. I am more than open to moving forward on that. Let's get the interpretation from the state. It certainly won't hurt.

Chairman Barry asked Atty. Rice can you get that to everyone before the BMA meeting tomorrow night.

Solicitor Rice answered yes I can.

Chairman Barry called for a vote.

Alderman Roy asked if the motion includes coming up with a policy for storing belongings.

Chairman Barry responded yes.

The motion carried on a unanimous roll call vote.

Alderman Long moved to have DPW or Parks & Recreation come up with a solution with respect to the storage of belongings. Alderman Roy duly seconded the motion.

Mayor Craig stated the city owns a building right now that is not being utilized so we could use that.

Chairman Barry stated if we do something like that, we should give them 30 days to get their property. There has to be a set date for them to make arrangements for their belongings.

Alderman Long stated I don't think they are going to want to be without their belongings for 30 days so I am on board with that.

Kevin Sheppard, Public Works Director, stated I am going to ask for guidance from the Solicitor's Office as far as storing materials because obviously we have never done this before and we want to make sure we do it legally. We are going to have to inventory items. Potentially there could be hazardous materials within those items such as needles. I don't believe it is as simple as taking material and storing it. One alderman mentioned the concern that we could be accused of taking items that were never there so we will have to inventory everything that was taken and moved I believe. We will need to work with the Solicitor's Office but I think the Mayor disagrees.

Mayor Craig responded I believe you should talk with the Solicitor's Office but one of the things we talked about is asking someone if they do have anything valuable and if they do let us know what it is and you write that down. I think there are ways that we can work through this. I think that we have two ordinances laying over if it gets approved at the full Board and there is ample time to put a process in place if that is what the Board wants.

Mr. Sheppard stated I am fine with that. My only comment was that I want to work with the Solicitor's Office to develop that policy.

Alderman O'Neil stated we have to make sure...I think we can work out the storage issue but there are going to be a lot of items that aren't going to storage and they have to be cleaned up and put in a dumpster. I am concerned and I was concerned when Kevin's folks had to pick up items from the courthouse that ended up in Veteran's Park. Kevin's folks had to go in and I think Alderman Long was there on a Saturday with them doing clean-up. We have needles and human waste. Some people might consider propane...is that a hazardous material of some sort. We can't just say to Kevin take care of this because it is not as simple as that. Chief Aldenberg and I were having a discussion about a dumpster. I think one of the reasons it cost so much when the state did it before was because of the hazardous waste component of it. The clean-up is eventually going to fall on Kevin and we have to make sure we have his back. The Mayor is shaking her head yes but we can't just send in me and Alderman Roy and Aldermen Long to clean this up. We have to have the right training and equipment to do this for the safety of our employees. Thank you.

Mayor Craig stated there is a process in place right now where the Health Department will go into these encampments when they are left vacant. I think that is something that we haven't talked about. A lot of times individuals will leave all of their belongings behind. That happens an awful lot. We know that because we get the calls and complaints from residents where there are encampments that are left vacant. The process right now is the Health Department will go in and pick up all of the needles and anything else there that nobody else should be dealing with. Then the Fire Department and Public Works go in and clean everything up. In fact, Public Works did a great job just last week behind Fisher Cat Stadium picking up a very large encampment and I believe on Wednesday they are planning on doing a clean-up over at Canal Street. So I just want to let this Board know that there is a process in place to insure the safety of our employees. Again, it is not anything that anyone wants to be doing but we have to.

Alderman Long stated I understand what the Mayor is saying but I think we ought to get out of the business of cleaning this stuff up. Everybody else who does this hires a professional. I know that is a major expense but I don't want to take the chance...what if a needle is missed? I don't think our employees are trained and it is not fair to ask them to be cleaning this stuff up. I know it is an expense to hire a hazmat team but they are the ones trained to do this unless there is training out there that I don't know about where we can get some employees training.

Alderman O'Neil stated I want to back up what Alderman Long said. The best move might be to get a professional firm in here that does this. I remember when that one group went in to first do Canal Street they were all suited up and it looked like they were going into a pretty bad situation but that is how they treated it.

City Clerk Normand stated I want to point out to the committee that this is an ordinance. I think Alderman Long mentioned something about reporting out tomorrow and we can certainly do that but an ordinance has a lengthy process. If the Board wants to fast track this or approve it under suspension of the rules, the earliest they can do that would be the second meeting in January because we have to notice it to the public. I also know that Alderman Long made a motion to come up with a solution for storage and I don't know if that two week period will provide time for that and we could have it as part of the agenda for that meeting. In terms of expectations of reporting this out, I just want the committee to be clear that we can certainly report it out tomorrow but nothing can be done on this ordinance until the second meeting in January. I have to publish this notice in the newspaper. So we will plan the normal process and at the second meeting it will come in as a report from committee and be ready if the Board wants to suspend the rules or if they want to continue the traditional ordinance process.

Chairman Barry called for a vote on the motion to have DPW come up with a process for storing the belongings of homeless people who go into the shelter.

Alderman O'Neil asked before I vote, shouldn't this be all departments not just DPW. We need the team on this one. I will vote yes but it needs to be a team effort.

Chairman Barry stated I agree with Alderman O'Neil that it should be coordinated with DPW and the Solicitor and other departments.

City Clerk Normand stated if I understand it, the motion is to have City staff work on a plan for storing the belongings before the next Board meeting.

Mayor Craig stated I think it is important to say who it is led by and I would say led by Parks & Recreation or DPW.

Chairman Barry stated that is fine.

The motion, as amended, carried on a unanimous roll call vote.

*There being no further business, **Alderman O'Neil** moved to adjourn. **Alderman Long** duly seconded the motion. Chairman Barry called for a vote. The motion carried on a unanimous roll call vote.*

A True Record. Attest.

A handwritten signature in black ink, appearing to read "Matthew Normand", with a stylized, flowing script.

Clerk of Committee

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Administration/Information Systems respectfully recommends, after due and careful consideration, that the ordinance amendments:

“Amending Chapter 130: General Offenses of the Code of Ordinances of the City of Manchester by adding a new section prohibiting camping in public places.”

“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

be referred back to the Committee on Alcohol, Other Drugs and Youth Services.

(Unanimous vote)

Respectfully submitted,




Clerk of Committee

At a meeting of the Board of Mayor and Aldermen held October 29, 2019, on a motion of Alderman O’Neil, duly seconded by Alderman Cavanaugh, the report of the Committee was accepted and its recommendation adopted.



City Clerk

MEMORANDUM

TO: Special Committee on Alcohol, Other Drugs, and Youth Services
FROM: Emily Gray Rice, City Solicitor 
RE: Ordinances and Next Steps
DATE: October 1, 2019

At its September 3, 2019 meeting, the BMA directed this office to draft ordinances prohibiting camping in public places, and addressing trespassing on public property in certain instances. This directive followed presentations and advice provided to the BMA by this office throughout 2018 and 2019.

The Committee has received draft ordinances for its consideration, as follows:

- Amending Section 96.03 to include cemetery within the definition of a park;
- Amending Section 96.06 to include hanging certain items;
- Amending Section 96.08 to provide for the issuance of trespass notices for offenses committed in parks and cemeteries;
- Adding Section 96.09 to establish an Appeals Division within the Department of Public Works; and,
- Amending Chapter 130 by adding Section 130.13, prohibiting camping in public places.

These drafts follow the action taken by the BMA at its September 3, 2019 meeting to strike the word, "overnight," from Section 96.06 (E), "Camp."

These drafts have not been reviewed by the Department of Public Works, the Manchester Police Department or other potentially-affected departments.

In addition, please be advised that the constitutionality of measures similar to the draft amendments to 96.08, 96.09 and Chapter 130 are under court review in other jurisdictions.

The BMA may suspend the rules to adopt the amendments to Section 96.03 and 96.06 at tonight's meeting.

In terms of next steps, prior to the adoption of the 96.08 and 96.09 amendments, a determination will need to be made as to which department will shoulder administrative responsibility for trespass citations, actions and appeals, and the details as to who those functions will be administered. The responsibilities, compensation (if any), and nature of employment of hearing officers will also need to be decided, along with any appropriation requirements for the support of the Appeals Division. Similarly, prior to the adoption of 130.13, a determination will need to be made as to how the interface between the City and shelter providers will be managed; how real-time space availability data will be obtained; and what appropriation requirements are associated with this effort.

Thank you.

Kevin A. Sheppard, P.E.
Public Works Director

Timothy J. Clougherty
Deputy Public Works Director



Commission
Toni Pappas
Patrick Robinson
James Burkush
Trixie Vazquez
Armand Forest

CITY OF MANCHESTER

Department of Public Works

October 7, 2019

Committee on Administration/Information Systems
c/o Mr. Matt Normand, City Clerk
One City Hall Plaza
Manchester, NH 03101

Honorable Committee Members:

The Department of Public Works applauds the Special Committee on Alcohol, Other Drugs and Youth Services for taking the necessary steps in order to curtail some of the negative behavior being displayed in our Parks. We agree with the majority of the steps being proposed as well as the processes structured to support enforcement of these ordinances and ordinance revisions.

However, we feel further discussion is necessary relative to the following:

Issuance of notices or warnings for City of Manchester Code of Ordinance, or State statute violations by 'park attendants'

Although "park attendant" is not specifically defined within the ordinance changes we have assumed this to refer to employees of the Parks, Recreation and Cemeteries Division of Public Works, who oversee the facilities and grounds during events.

These individuals are not trained to perform the functions defined within the ordinance. In addition the skillset required and responsibilities fall outside the job classification. We recommend these responsibilities be limited to those with proper training and experience.

Adjudication of trespass notices and establishment of an Appeals Division within Public Works

The responsibilities associated with proper management and oversight of these matters falls outside the traditional mission and skillset of the Public Works Department staff. In our opinion, the City would be better served by appointing an agency with more experience in matters of law to oversee these proceedings.

Thank you for your consideration. Mr. Clougherty, or myself, will be available for questions regarding this matter.

Sincerely,


Kevin A. Sheppard
Director of Public Works

Cc: Emily Rice/City Solicitor
Carlo Capano/Chief of Police
Timothy Clougherty/Deputy DPW Director
Mark Gomez/Chief of Parks and Recreation

City of Manchester New Hampshire

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AN ORDINANCE

“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

- I. Amend the Code of Ordinances by inserting the following new language.

§96.08 ENFORCEMENT.

(D) *Issuance of a Formal Trespass Notice.* The Public Works Director or designee, park attendants, and the Manchester Police Department (hereinafter also referred to as, “the enforcing agent”) may, in their discretion, issue a formal trespass notice or warning to any individual whom they have probable cause to believe has, in their presence, committed any violation of the City of Manchester Code of Ordinances, or of any state statute, or committed a contempt offense, provided that the alleged conduct occurred while in any city park and subject to the following provisions:

- (1) *Warning to be issued.* Prior to issuance of any formal trespass notice under this provision, the individual shall be issued a verbal warning and given a reasonable opportunity to cure the offending conduct by taking corrective action before a formal notice of trespass from the park is issued.

- (2) *Must be supported by probable cause.* A formal trespass notice shall only be issued in those instances in which the enforcing agent has probable cause to believe that the person to be trespassed has committed a violation of the City of Manchester Code of Ordinances, or of any state statute, or committed a contempt offense and the alleged misconduct has occurred in the presence of the enforcing agent issuing the notice.

- (3) *Written order required.* Any and all formal trespass notices shall be in writing on the form adopted by the Public Works Director or designee and shall have the following information, in detail:

- (a) The name of the trespassed individual;
- (b) The address of the trespassed individual;
- (c) The date of birth of the trespassed individual;
- (d) The date and time that the trespass order shall go in effect. All dates and times listed shall afford the person being trespassed a reasonable opportunity to collect their possessions and exit the named park in an orderly and safe fashion. However, in the event that the person trespassed is arrested, the date and time of the arrest shall be listed;
- (e) The duration of the trespass, as governed by this section;
- (f) The name of the specific park from which the person is trespassed per this specific, written order. However, at no time shall any single trespass order be issued which cites all City of Manchester parks, or any words or combination of words that could be interpreted as trespassing the person from all City of Manchester parks. Notwithstanding the foregoing, nothing shall prevent a person from being issued multiple trespass orders under this provision;

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,
as follows:

- (g) The name of any witness or witnesses to the issuance of the trespass order, and their contact information;
- (h) The printed name of the issuing enforcing agent and the name of their department;
- (i) The signature and date of signature of the enforcing agent;
- (j) A statement that the person has a right to appeal the trespass order by filing a written request to appeal with the Department of Public Works located at 475 Valley Street, Manchester, NH 03103 within ten (10) calendar days of the date that the trespass order was issued; that any appeal hearing will be held at the Department of Public Works before a neutral hearings officer; and that in the event of the filing of an appeal, the trespass order shall be stayed pending the ruling of the hearing officer; and,
- (k) A statement that the alleged offender is barred from going to, entering, or remaining at the specified park for the period set out in the formal trespass notice, absent a formal waiver granted by the Director of Public Works or his or her designee or the pendency of an appeal.

(4) *Waiver.* A person issued a formal trespass notice under this provision may apply in writing on the form provided by the City to the Director of Public Works for a waiver of the formal trespass notice on the grounds that access to the park specified in the formal trespass notice is necessary:

- (a) As a condition of or to allow performance of the person’s employment;
- (b) To travel to and from, and to access their lawful residence or place of employment;
- (c) As a requirement or part of any licensed and recognized educational program;
- (d) To engage in the exercise of a constitutionally-protected activity; and/or,
- (e) For other good cause alleged.

The Director of Public Works or designee shall have sole and exclusive authority to grant a waiver, and it shall be the burden of the applicant to demonstrate that the waiver is necessary for the reasons alleged. The Director of Public Works shall issue a written decision upon any application for a waiver within five (5) business days and mail the decision to the address provided by the applicant for waiver.

The appeal of a formal trespass notice shall not bar a person from applying for a waiver. Applying for a waiver is not a prerequisite to appealing a formal trespass notice.

(5) *Original.* A complete original formal trespass notice shall be served in-hand to the named recipient at the time the named recipient is served with a copy of any citation, summons, or associated complaint.

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“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,
as follows:

(6) *Copies.* A true and accurate copy of any formal trespass notice issued shall be filed with both the Department of Public Works and the Manchester Police Department. A copy of the formal trespass notice shall be provided to the named recipient of the trespass notice upon request and without cost for the first copy. The Director of Public Works or designee may charge the named recipient a reasonable copy fee for any additional copies.

(7) *Length of Trespass.* Whether a named recipient is issued a formal warning or a formal trespass notice shall be determined by the procedure set forth above and by whether the person has a “qualifying prior offense.” The duration of any trespass notice shall also be based upon whether the named recipient has a “qualifying prior offense.” The term “qualifying prior offense” as used in this section shall mean a conviction dated after the effective date of this ordinance by a court of competent jurisdiction for any violation of the City of Manchester Code of Ordinances, state statute, or contempt offense alleged to have occurred in a City of Manchester park or cemetery, or the entry of a default dated after the effective date of this ordinance by a court of competent jurisdiction under R.S.A. 39:31-d, IV.

The following action shall be taken based upon whether the named recipient has qualifying prior offenses:

(a) *First Offense – Formal Warning.* A person who does not have a qualifying prior offense shall be issued a formal written warning advising the person that any further violations of this provision may subject them to a formal trespass from the City of Manchester park.

(b) *Second Offense – Twenty-Four (24) Hour Trespass Notice.* Any person who, in the two (2) years preceding the date of the violation of the City of Manchester Code of Ordinances, or of a state statute, or a contempt offense which is the subject of the current enforcement action, has a “qualifying prior offense” and has not been previously provided with a formal trespass notice, shall be trespassed from the park specified in the order for a period of twenty-four (24) hours from the effective time and date of the formal trespass order or order upholding the trespass order following appeal, whichever is later.

(c) *Third Offense – Thirty (30) Day Trespass Notice.* A person, who in the five (5) years preceding the date of the violation of the City of Manchester Code of Ordinances, or of a state statute, or a contempt offense which is the subject of the current enforcement action, has no more than two “qualifying prior offenses” shall be trespassed from the park specified in the order for a period not exceeding thirty (30) days from the effective time and date of the formal trespass order or order upholding the trespass notice following appeal, whichever is later.

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“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,
as follows:

(d) *Fourth Offense or Subsequent Offenses.* A person, who in the five (5) years preceding the date of the violation of the City of Manchester, NH Code of Ordinance, state statute, or contempt offense which is the subject of the current enforcement action, has three “qualifying prior offenses” shall be trespassed from the park specified in the order for a period not exceeding ninety (90) days from the effective time and date of the formal trespass order or order upholding the trespass notice following appeal, whichever is later.

(8) *Appeals.* Any person issued a formal trespass notice under this provision shall have the right to appeal the issuance of the order under the procedure set forth above and the filing of an appeal shall stay the provisions of the formal trespass notice pending resolution.

(9) *Penalty.* Any person who violates a formal trespass notice issued pursuant to this section, shall be subject to the immediate expulsion from the identified park under §96.08(B) and to the penalty set forth in §10.99.

§96.09 DIVISION ESTABLISHED.

An Appeals Division is hereby established within the Department of Public Works.

§96.10 DUTIES OF APPEALS DIVISION.

The Appeals Division shall:

- (A) Facilitate the appeals process for formal trespass notices issued pursuant to §96.08(D);
- (B) Issue, receive, manage, and maintain all records, orders, and filings for all formal trespass notices and formal warnings issued pursuant to §96.08(D);
- (C) Contract with independent hearing officers and interpreters and insure the availability of a hearing officer and interpreters for appeals of formal trespass notices issued pursuant to §96.08(D);
- (D) Provide space and necessary staff for any hearings conducted with regards to an appeal of a formal trespass notice issued pursuant to §96.08 (D);
- (E) Receive and process all waiver requests made pursuant to §96.08(D)(4);
- (F) Provide all necessary equipment to audio record and store audio recordings of any hearings conducted pursuant to this appeals process;

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,
as follows:

(G) Adopt and issue all forms, notices, and orders related to this appeals process; and

(H) Perform all such other duties or tasks as may be assigned by the Board of Mayor and Aldermen or as may be incidental to the duties and tasks set forth above.

§96.11 ADMINISTRATION.

The Appeals Division shall be responsible for the daily administration of the appeal process.

§96.12 APPEALS PROCEDURE.

(A) The purpose of the section is to provide the rules, practices, and procedures governing appeal of formal trespass notice issued under §96.08(D). The rules, practices, and procedures set forth herein shall govern all appeals and hearings related to formal trespass notices issued under §96.08(D), unless otherwise provided for by an action of the Board of Mayor and Aldermen. The Director of Public Works or his or her designee shall be authorized to adopt any forms to assist this appeals process.

(B) A Hearing Examiner shall not waive the application of any provision of this section.

(C) *Definitions.* All words are ascribed their plain and ordinary meaning, except for the following terms:

(1) “Appellant” means the person who has filed a request for a hearing with the Appeals Division seeking to overturn the issuance of a formal trespass notice issued under §96.08(D)

(2) “Enforcing agent” shall mean a person authorized under §96.08(D) to issue a formal trespass notice.

(3) “Formal trespass notice” shall mean a notice served upon a person by an enforcing agent under §96.08(D) informing said person that they are trespassed from a specific park pursuant to §96.08(D).

(4) “Hearing Examiner” shall mean the person designated by the Appeals Division to hold the appeal hearing.

(5) “Recipient” shall mean the person who was issued a formal trespass notice pursuant to §96.08(D)

(6) “Working days” shall mean days exclusive of Saturday, Sunday, state, and federal holidays.

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(D) Within ten (10) working days of the date of issuance indicated on the formal trespass notice, the recipient may file a request for a hearing at the Appeals Division of the Department of Public Works at no cost to the recipient. The Director of Public Works or his or her designee shall have the authority to accept filing via facsimile or e-mail, at their discretion, and shall provide public notice of any exercise of this discretion including an email address and facsimile number. Any request for a hearing received by the Appeals Division after this time period shall be returned to the appellant with that notation that the request is “dismissed – untimely.”

(E) *Request for a Hearing.* All requests for a hearing shall be typed, legibly written, or printed and shall contain the following information:

- (1) The name, date of birth, and address of the recipient;
- (2) The name and address of the recipient’s attorney, if any;
- (3) The name and agency of the enforcing agent;
- (4) A concise statement of facts and grounds upon which the recipient is relying upon to support their request that the formal trespass notice be overturned;
- (5) A request for relief that the formal trespass notice be overturned;
- (6) A citation to any statute, rule, orders or other authority that entitles the recipient to the relief requested;
- (7) The signature of the recipient and any counsel for the recipient along with the date signed.

(F) Incomplete or illegible requests for a hearing shall be returned to the appellant at the address provided with a notice of the deficiencies. The Appeals Division shall permit the appellant an additional ten (10) working days to cure any noted deficiencies. If any subsequent request for a hearing filed under this provision remains illegible, or fails to contain the required items set forth above, or if the appellant fails to take any corrective action, the request for a hearing shall be summarily denied and no hearing shall be scheduled. Notice of the summary denial shall be sent to last known address of the appellant informing the appellant of the denial and that the trespass order set forth in the formal trespass notice shall go into effect without further notice forty-eight (48) hours after the date on cover letter. A copy of this Notice shall also be sent to the City Clerk’s Office to be posted for a period of two (2) weeks in a location designated by the City Clerk.

(G) If a complete and legible request for a hearing is filed, the Appeals Division shall schedule a hearing in accordance with the provisions of this section and shall send notice to all parties. A copy of the request for hearing filed by the appellant shall be affixed to the notices.

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(H) All hearings shall be assigned a case number and be scheduled as soon as practicable following acceptance of the request for a hearing by the Appeals Division. The scheduling of the hearing shall provide all parties with a reasonable opportunity to prepare for the hearing including a reasonable amount of time to conduct discovery and subpoena witnesses. No hearing shall be initially scheduled sooner than fourteen (14) working days following the date the Appeals Division accepts the request for a hearing and no hearing shall be initially scheduled later than thirty (30) working days following the date the Appeals Division accepts the request for a hearing.

(I) *Notice of Hearings.* All hearing notices shall be in writing setting forth the date, time, and location of the hearing and sent postage pre-paid to the appellant and the enforcing agent at the address provided in the request for a hearing, unless:

- (1) Either party has prearranged with the Appeals Division to receive electronic service and provided an accurate email address;
- (2) Either party has filed a written notice with the Appeals Division updating their address; or
- (3) An attorney has filed an appearance with the Appeals Division advising that they are representing either the appellant or the enforcing agent at which time all notices, communications, and orders shall be sent only to the attorney or attorneys.
 - (a) Any attorney who wishes to withdraw from representation shall file a written notice with the Appeals Division informing the Division of the withdrawal at which time all further notices and order shall be sent to the original party at the last address provided.

(J) *Continuances.* Unless otherwise provided herein, all requests for a continuance of a hearing shall be made in writing with a copy to all other parties and filed with the Appeals Division within five (5) working days of the date of the hearing. The written request or motion shall contain but not be limited to the following information:

- (1) The specific reason(s) for the request including issue(s) to be resolved and conflicts with scheduled court appearances;
- (2) Optional dates when all parties to the matter would be available;
- (3) The identity of the requestor; and
- (4) The name of the appellant and appellant's date of birth.

(K) Appearance by a representative shall not waive a party's required presence at a hearing.

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“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(L) Oral motions or late motions to continue shall be permitted in exigent circumstances, which shall include:

- (1) Serious illness;
- (2) Hospitalization;
- (3) Incarceration;
- (4) Death of a family member; or
- (5) Other unforeseen circumstances beyond the party's control that requires the party's absence from the scheduled hearing.

(M) *Hearing Examiner.* The Hearing Examiner shall be supplied by the Appeals Division at the cost of the Appeals Division and at the time the Hearing Examiner enters into any contract for services with the Appeals Division, they shall not be a present or former employee of the City of Manchester, NH, of a parent, sibling, or spouse of a current employee of the City of Manchester, NH and shall be an attorney in good standing and licensed to practice law in the State of New Hampshire.

(N) *Appeal Assignment.* When an appeal is assigned to a Hearing Examiner, it shall remain with that Hearing Examiner until the appeal is concluded unless transfer is required based upon the following reasons:

- (1) The Hearing Examiner has withdrawn based upon a discovered conflict of interest; or
- (2) The Hearing Examiner is unable to continue in their capacity due to illness, accident, death, or termination of contract with Appeals Division.

(O) *Withdrawal of Hearing Examiner.* A Hearing Examiner shall, at any stage of the appeals process, withdraw from any matter if the Hearing Examiner has or has had a personal or business relationship with any party, witness, or representative that may hinder the Hearing Examiner from being able to arrive at an impartial decision on the issue(s), or for any other reason that might interfere with the Hearing Examiner's ability to remain impartial.

(P) *Authority of the Hearing Examiner.* Subject to state law and the provisions of the City of Manchester, NH Code of Ordinances, the Hearing Examiner shall have the authority to:

- (1) Schedule and hold hearings under this provision;
- (2) Administer oaths and affirmations;
- (3) Order the sequestration of a witness or witnesses, upon request of a party;
- (4) Determine the order of proof in any proceeding;
- (5) Receive relevant evidence and rule on offers of proof in appeal hearings;
- (6) Take official notice of any facts which are of common knowledge and general notoriety;
- (7) Regulate and control the course of any hearing under this provision;

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

- (8) Hold on the record conferences for the settlement or simplification of issues, or for obtaining stipulations as to issues of fact or proof by consent of the parties;
- (9) Dispose of procedural requests, including adjournments or continuances, at the request of the parties or on the Hearing Examiner's own motion;
- (10) Interview and examine witnesses and documents as the case may require;
- (11) Direct parties to appear at hearings;
- (12) Consider and evaluate the facts and evidence on the record and make findings of fact, conclusions of law, and dispositions;
- (13) Determine credibility or weight of evidence in making findings of fact and conclusions of law;
- (14) Render oral and written decisions, reports, or recommendations as authorized by statute, law, or ordinance as may be necessary;
- (15) Make a complete record of any proceeding including all relevant matters;
- (16) Uphold or overturned a formal notice of trespass; and
- (17) Take any action in a proceeding necessary to conduct and complete the appeal not inconsistent with applicable statutes, laws, ordinances, and precedents.

(Q) *Control of the Hearing.* In cases of disorder or refusal to comply with the provision governing the hearing, the Hearing Examiner shall use reasonable means to control the hearing including, but not limited to, sequestration, exclusion, and continuance of the matter. Parties, representatives, observers, and witnesses shall not engage in bitter exchanges, vulgarities, or abuse or make offensive or insulting comments. When such an act is committed, the Hearing Examiner shall admonish the offender reminding the offender that such behavior does not contribute to a fair hearing and impedes the orderly disposition of the matter. If the offense is repeated and further admonition appears fruitless and the Hearing Examiner finds that the hearing cannot proceed due to the continued disorderly conduct, the Hearing Examiner after administering a full and fair warning that the persons conduct will result in exclusion, shall exclude the disorderly person from the hearing. The offensive conduct of a party, witness, member of the public, or representative shall not form the basis for a finding against a party. Rather, their ordered exclusion shall only prevent their further participation in the hearing and the hearing will continue without their presence and the Hearing Examiner shall issue a ruling based upon the evidence presented.

(R) *Record of the Hearing.* All hearings under this provision shall be audio recorded and a copy of the hearing shall be made available upon written request for a reasonable fee as determined by the Director of Public Works. All requests for a copy of the audio record must be made in writing and received by the Appeals Division within sixty (60) days of the date of the hearing. All audio records shall be retained for the period of seventy-five (75) days by the Appeals Division.

City of Manchester New Hampshire

In the year Two Thousand and Nineteen

AN ORDINANCE

“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,
as follows:

(S) *Public Access.* Except where otherwise provided for by law, all appeals hearing shall be open to the public. Members of the press shall be admitted to the hearings whenever the public is permitted. If the press is present at a hearing, the Hearing Examiner shall brief them, off the record, in the presence of all parties, as to the nature and purpose of the hearing. Any person or party shall be permitted to record the hearing provided they notify the Hearing Examiner prior to the commencement of the hearing that they will be recording. Upon receiving such notification and prior to commencing the hearing, the Hearing Examiner shall notify all present that in addition to the official audio, that specific person or persons are recording the hearing.

(T) *Interpreters.* Upon request, an interpreter shall be provided to the appellant for the appellant’s specified language. The interpreter shall not be at the time that their services contracted or volunteered a present or former employee of the City of Manchester, NH, of a parent, sibling, or spouse of a current employee of the City of Manchester, NH. All requests for an interpreter should be filed in writing with the Appeals Division at the time the request for hearing is filed. Request for an interpreter filed or made after the date that the request for hearing was filed may result in the hearing being continued. Prior to commencing any hearing where an interpreter will be participating, the Hearing Examiner shall administer an oath or affirmation to the interpreter(s) to truthfully and accurately translate, to the best of their ability, all questions asked and answers given.

(U) *Oaths or Affirmations.* All testimony offered by live witnesses present at the hearing shall be under oath or affirmation. The Hearing Examiner shall administer the oath or affirmation of each witness.

(V) *Motions.* Any and all requests for relief shall be in writing either typed, legibly written, or printed and shall state with particularity the grounds upon which they are based. A written motion submitted shall become part of the case file. Any party filing a written motion shall certify that a copy was sent to the opposing party or the opposing party’s representative. All motions shall be filed five (5) working days prior to the hearing and any objection or responsive pleading may be filed up and until the time of the hearing. Failure to file an objection shall not be grounds to grant a particular motion rather, the Hearing Examiner shall consider the relief requested and the grounds and facts contained in the motion and any and all relevant information in the case file before making a determination. Oral and untimely motions shall only be allowed if the Hearing Examiner finds on the record that circumstances prevent the filing of a timely written motion. If the Hearing Examiner allows a late written motion or oral motion, the Hearing Examiner shall afford the opposing party a reasonable opportunity to respond and shall order the hearing continued to a later date to allow for the response and the continuance shall be attributed to the party that filed or made the motion.

City of Manchester New Hampshire

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(W) *Discovery.* A Hearing Examiner shall permit discovery upon a finding by a preponderance of the evidence that such discovery is necessary for a fair hearing. In determining necessity that examiner shall consider:

- (1) The complexity of the issues involved;
- (2) Other opportunities or information available to discover the information sought; and
- (3) Any other special or exceptional circumstances that exist.

(X) *Applicable Rules of Evidence.* The following rules shall govern all hearings under this provision related to an appeal of formal trespass notice issued pursuant to §96.08(D):

- (1) Any hearing under this provision shall not be bound by common law or the rules of evidence;
- (2) All relevant evidence shall be admissible;
- (3) Evidence may include but shall not be limited to:
 - (a) Statements made under oath including prior testimony;
 - (b) Affidavits;
 - (c) Official documents;
 - (d) Testimony of witnesses.
 - (e) Hearsay shall be admissible, provided the witness offering the hearsay testimony is not a mere reporter of information gathered by others as set forth under *State v. Poulicakos*, 131 N.H.709 (1989).

(Y) *Exclusion of Evidence.* The Hearing Examiner may exclude any irrelevant, immaterial, or unduly cumulative or repetitious evidence.

(Z) *Privileges and Immunities.* Applicable statutory and constitutional privileges and immunities requiring exclusion of evidence in civil proceedings shall be recognized, provided however, that nothing contained herein shall prohibit a party from waiving his privilege or immunity.

(AA) *Decisions.* Within a reasonable time after the hearing, not to exceed thirty (30) working days after the conclusion of the hearing, the Hearing Examiner shall issue a written decision either upholding or overturning the formal trespass notice issue to the appellant and the reason therefore. All decisions shall be reached on the basis of a preponderance of the evidence. The decision setting forth findings of fact, conclusions of law, and disposition made by the Hearing Examiner shall be provided to all parties. Upon request of the Hearing Examiner, either party may submit proposed findings of fact and conclusions of law. If submitted, the Hearing Examiner's decision shall include rulings on the proposals. All decisions of the Hearing Examiner are final and not subject to reconsideration. A copy of any decision rendered under this provision shall be sent to the City Clerk's Office where it will be posted for public inspection and review for a period of two (2) weeks.

City of Manchester New Hampshire

In the year Two Thousand and

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AN ORDINANCE

“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

§96.13 APPEAL – BURDEN OF PROOF AND STANDARD OF REVIEW.

(A) *Burden of Proof*: The City shall bear the burden of proof in any appeal hearing and must prove its case by a preponderance of the evidence. “Proof by preponderance of the evidence” means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not to be true. No negative inference shall be drawn by the Hearing Examiner based upon the appellant’s decision to remain silent or not present evidence.

(B) *Standard of Review*. The Hearing Examiner shall uphold the formal trespass notice if the Hearing Examiner finds that the City has met its burden and shown by preponderance of the evidence that:

- (1) the formal trespass notice was issued to appellant;
- (2) the appellant received the formal trespass notice in compliance with all of the requirements of §96.08(D);
- (3) that the enforcing agent had probable cause to believe that the appellant violated a provision of the City of Manchester, NH Code of Ordinances, state law, or contempt offense while in a city park or cemetery;
- (4) that the appellant was given a verbal warning that the person’s conduct would result in a formal trespass order;
- (5) that the appellant was given an opportunity to correct their behavior and take corrective action; and
- (6) that the appellant did not correct their behavior and take corrective action. If the Hearing Examiner finds that the City has failed to establish any of the above-listed factors, then the formal trespass notice shall be overturned.

(C) The Hearing Examiner is only authorized to either uphold the formal trespass notice or overturn the formal trespass notice. The Hearing Examiner shall not in any other manner change any term of the formal trespass notice.

§96.14 FAILURE TO APPEAR.

(A) *Failure to Appear by Appellant*. If the appellant fails to appear for the hearing and no motion to continue has been made or a motion to continue has been denied, the Hearing Examiner shall request an offer of proof by the enforcing agent or the City’s representative and shall make a determination based upon the offer of proof whether the City has met its burden of proof. If the City meets its burden of proof by offer of proof then the formal trespass notice shall be upheld. If the City does not meet its burden of proof by offer of proof then the formal trespass notice shall be overturned. The Hearing Examiner shall issue a decision setting forth any findings and rulings under this section and send a copy to all parties.

City of Manchester New Hampshire

In the year Two Thousand and Nineteen

AN ORDINANCE

“Amending Section 96: Parks and Recreation of the Code of Ordinances of the City of Manchester by establishing formal trespass procedures in City parks and a related Appeals Division to address trespass orders.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

B) *Failure to Appear by Enforcing Agent or City Representative, or essential witness.* If the City is unable to go forward with the hearing due to absence of the enforcing agent, city representative, or an essential witness, and the City has not filed a motion to continue or a motion to continue is denied, the formal trespass notice shall be overturned. The Hearing Examiner shall issue an order overturning the formal trespass notice and state the non-appearance as the reason. A copy of this order shall be sent to all parties.

(C) *Motions to Re-Open.* A party who failed to appear may move to re-open the appeal for a hearing on the merits. A Hearing Examiner shall re-open a case where the Hearing Examiner is convinced that the party had good cause for failing to appear for the hearing. Good cause shall mean:

- (1) Serious illness;
- (2) Hospitalization;
- (3) Incarceration;
- (4) Death of a family member; or
- (5) Any other unforeseeable circumstance beyond the party's control that requires the party's absence from the scheduled hearing.

§96.15 NOTICE OF DECISION.

(A) If the formal trespass notice is upheld by the Hearing Examiner, then the trespass order contained therein shall go into effect forty-eight (48) hours after the date upon which a copy of the decision was sent to the parties. The date that the decision was mailed out shall be clearly indicated on a cover letter.

(B) If the formal trespass order is overturned by the Hearing Examiner, then the formal trespass notice shall be so marked.

(C) A copy of the formal trespass notice, any decision, and any cover letter shall be sent to all parties and to the Manchester Police Department and City Clerk's Office.

II. This ordinance shall take effect upon passage.

City of Manchester New Hampshire

In the year Two Thousand and

Nineteen

AN ORDINANCE

“Amending Chapter 130: General Offenses of the Code of Ordinances of the City of Manchester by adding a new section prohibiting camping in public places.”

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,
as follows:

I. Amend the Code of Ordinances by inserting the following new language.

§130.13 CAMPING IN PUBLIC PLACES.

(A) *Prohibitions.* It shall be unlawful for any person to use or cause to be used any of the streets, sidewalks, square or any other public place, excepting parks as governed by Chapter 96, as a camping place absent prior written permission from the Board of Mayor and Aldermen or its designee. As used in this provision, the term "camp" or "camping" shall mean the use of public property as a temporary or permanent place of dwelling, lodging or residence, or as a living accommodation at any time between sunset and sunrise as defined on the date of offense by the official government record, or as a sojourn that has not been authorized by the Board of Mayor and Aldermen or its designee. Indicia of camping may include, but are not limited to, any one or more of the following: storage of personal belongings; using tents, tarps or other temporary structures for sleeping or storage of personal belongings; hanging clothes line; carrying on cooking activities or making any fire in an unauthorized area; or any of such activities in combination with either sleeping or making preparations to sleep (including but not limited to the laying down of cots, cushions, sheets, blankets, sleeping bags or other bedding for the purpose of sleeping).

(B) *Enforcement.* The Manchester Police shall enforce this camping section only when the individual is on public property and there is an “available overnight shelter.” The term "available overnight shelter" shall mean that the person can, at the time of citation, go to a local homeless shelter, that said shelter has an available overnight space for the individual at no charge to the person, that said available overnight space will be available to that person upon their arrival and that the person is not barred for any reason including but not limited to bail conditions, protective orders, trespass orders, rules of the shelter, policies of the shelter, intoxication or impairment from going to the local homeless shelter. No person shall be cited unless and until a police officer receives confirmation of “available overnight shelter” as defined above, and the person has been advised that overnight shelter is available, warned that they will be cited should they not go to the “available overnight shelter” and continue to camp, and they have been given a reasonable opportunity to comply with the request. Reasonableness shall be judged based upon the specific facts of each case. If during the course of reasonably attempting to comply with request of the police officer to desist camping in a public place, the shelter bed becomes unavailable for any reason, the person shall not be cited. A police officer shall be required to conduct this inquiry each and every time prior to issuing a citation under this section.

(C) *Exceptions.* This section does not affect any other provision of the City of Manchester Code of Ordinances.

(D) *Penalty.* Any person who violates this provision shall be sentenced under the provisions of §10.99 (a fine up to \$1,000).

II. This ordinance shall take effect upon its passage.